

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

ARTHUR PROVENCHER, MICHAEL  
MCGUIRE, and RONALD MARTEL,  
individually and on behalf of all similarly  
situated individuals,

Plaintiffs,

and

JULIE A. SU, Acting Secretary of Labor,  
United States Department of Labor,

Intervenor,

v.

BIMBO BAKERIES USA, INC. and BIMBO  
FOODS BAKERIES DISTRIBUTION LLC,

Defendants.

Civil Action No. 2:22-cv-00198-wks

**THE ACTING SECRETARY’S NOTICE OF SUPPLEMENTAL AUTHORITY  
IN SUPPORT OF HER MOTION TO DISMISS DEFENDANTS’ COUNTERCLAIM**

Intervenor Julie A. Su, Acting Secretary of Labor, United States Department of Labor (the “Acting Secretary”) respectfully submits this notice that a recently issued opinion, *Campbell v. Marshall Int’l, LLC*, No. 20 C 5321, 2023 WL 6795700 (N.D. Ill. Oct. 13, 2023), provides additional support for the Acting Secretary’s Motion to Dismiss Defendants’ Counterclaim (ECF No. 44).

In *Campbell*, the district court dismissed the putative employers’ counterclaims for breach of contract and specific performance where the plaintiff alleged that she had been misclassified as an independent contractor and brought claims under the Fair Labor Standards Act and Illinois state wage laws. *See id.* at \*1, 4. In dismissing the counterclaims, the court

observed that “[e]xposing workers to countersuits simply for challenging their employment status would amount to an abridgement of rights conferred by the FLSA, and would unreasonably chill such challenges.” *Id.* at \*2. Moreover, the court determined that it “need not conduct a separate analysis on whether defendants’ claims are also impermissible under the” Illinois state wage laws. *Id.* at \*2 n.1 Because the putative employers’ counterclaims “would contravene FLSA rights, defendants cannot maintain their claims based on these [state law] provisions at all.” *Id.* Finally, the court made clear that if the workers “are found to be employees, then their right to wages is governed by statute and case law,” not by any agreements between the parties. *Id.* at \*2.

The *Campbell* decision is relevant to the issues discussed at pages 12–16 of the Memorandum in Support of the Acting Secretary of Labor’s Motion to Dismiss Defendants’ Counterclaim (ECF No. 44-1) and at pages 4–9 of the Reply in Support of Acting Secretary of Labor’s Motion to Dismiss (ECF No. 51).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the CM/ECF system on October 24, 2023, shall be sent electronically to all registered participants as identified on the Notice of Electronic Filing.

/s/ Emily V. Wilkinson  
Emily V. Wilkinson